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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re L.H., a Person Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.J.,

Defendant and Appellant.

E072404

(Super.Ct.No. J271573)

OPINION

APPEAL from the Superior Court of San Bernardino County. Christopher B.
Marshall, Judge. Affirmed.

Emily Uhre, under appointment by the Court of Appeal, for Defendant and
Appellant.

Michelle D. Blakemore, County Counsel, Svetlana Kauper, Deputy County
Counsel for Plaintiff and Respondent.

The juvenile court found defendant and appellant A.J. (Father) to be an alleged father of L.H. (a girl, born June 2017). E.H. (Mother) is L.H.'s mother. The juvenile court terminated Mother's and Father's parental rights to L.H. (Welf. & Inst. Code, § 366.26, subd. (b)(1).)¹ Father contends the juvenile court erred by finding L.H. was adoptable. Plaintiff and respondent San Bernardino County Children and Family Services (the Department) contends Father lacks standing to appeal. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

A. *FACTS*

Mother and Father were not married. Father was present at the birth of L.H. (minor) and signed a declaration of paternity. Minor tested positive for marijuana at birth. Minor also had an "unconfirmed positive urine test for amphetamines." Mother admitted consuming marijuana throughout her pregnancy with minor. Mother's criminal history included (1) multiple counts of prostitution (Pen. Code, § 647, subd. (b)); (2) multiple counts of possessing methamphetamine (Health & Saf. Code, § 11377, subd. (a)); and (3) kidnapping (Pen. Code, § 207, subd. (a)).

Mother had four older children who were not in her care. Mother's history with her four older children included the following: (1) in May 2010, Mother's reunification services were terminated for L.H.1; (2) in August 2014, Mother's parental rights were terminated for L.H.2, and L.H.2 was adopted; (3) in September 2016, Mother's

¹ All subsequent statutory references will be to the Welfare and Institutions Code unless otherwise indicated.

reunification services were terminated for B.A.; and (4) the juvenile court denied Mother reunification services for L.H.3. In January 2017, B.A. and L.H.3 were given permanent plans of legal guardianship with their paternal grandmother, and their dependency cases were dismissed.

At the hospital, Mother identified Father as minor's father. Father was born in 1974. Father had a "significant criminal history." Some of Father's crimes included: (1) lewd acts with a child under 14 years old (Pen. Code, § 288) in December 1998; (2) sexual intercourse with a person who was under the age of 18 years old (Pen. Code, § 261.5, subd. (a)) in August 1998; (3) annoying or molesting a child under the age of 18 years old (Pen. Code, § 647.6) in September 1992; (4) burglary in 2014 and 1996; and (5) possession of materials for manufacturing methamphetamine (Health & Saf. Code, § 11383.5, subd. (b)) in 2013. At the hospital, a Department social worker tried to interview Father. Father said to the social worker, " 'I have nothing to say to you.' "

On June 20 or 21, the Department placed minor in foster care, in the home of Mr. and Mrs. A. (Foster Parents). On June 23, the juvenile court held a detention hearing in the case. Mother said there were three men who might be minor's father. The other two men were B.A.1 and C.I. Father requested a paternity test, which the juvenile court ordered.

B. JURISDICTION

Father was ordered to drug test on June 23 and July 5. Father did not test on either date. Father told a Department social worker that he was a registered sexual offender because "20 years ago he was involved with a female who was 13 years old."

The Department did not offer Father predisposition services due to Father being “a life time registered sex offender.” The Department gave Father paperwork reflecting that he needed to take a paternity test by July 6. Father signed the paperwork. Father did not take the paternity test.

Minor remained in Foster Parents’ home. Foster Parents did not report any problems with minor; she was healthy and meeting her developmental milestones.

On July 13, the juvenile court held a jurisdiction hearing in the case. C.I. was present at the hearing and requested a paternity test, which the court ordered. In regard to Father’s paternity test, Father’s attorney said, “He’s waiving that request. He’s no longer requesting a paternity test.” The jurisdiction hearing was then set as contested at Mother’s request.

On February 8, 2018, the juvenile court held a contested jurisdiction hearing in the case. A paternity test revealed that C.I. was not minor’s father. Mother requested that B.A.1 be tested for paternity of minor, which the court ordered. The court asked Mother who minor’s father was. Mother responded, “[B.A.]—I was living with him at the time, but I, also, had a boyfriend which is [Father.]”

The juvenile court found true the allegations that (1) Mother failed to protect minor due to Mother’s drug use and criminal history (§ 300, subd. (b)); (2) Father posed a substantial risk of harm to minor due to Father’s drug use and criminal history, and because Father knew or reasonably should have known of Mother’s drug abuse while she was pregnant (§ 300, subd. (b)). The juvenile court also found true the allegations that Mother’s parental rights to L.H.2 were terminated; Mother’s reunification services

for L.H.1 and B.A. were terminated; and Mother was denied reunification services for L.H.3. (§ 300, subd. (j).)

C. DISPOSITION

On March 16, the juvenile court held a disposition hearing in the case. A paternity test revealed that B.A.1 was not minor's father. The court declared Father to be minor's "alleged father, not entitled to reunification services." The Department recommended the court find Father ineligible for reunification services due to Father being a registered sexual offender (§ 361.5, subd. (b)(16)), and the court made that finding. The juvenile court denied reunification services for Mother due to Mother's child welfare history with her four older children. (§ 361.5, subd. (b)(10)&(11).)

D. TERMINATION

Since birth, minor would cry hysterically for four to six hours at a time, despite being consoled by caregivers. Minor's hysterical crying was a symptom of being exposed to drugs. Minor was underweight and was diagnosed with failure to thrive. Minor tried to scoot but dragged her right leg. Minor received occupational therapy and physical therapy, which reduced the duration of her hysterical crying. Minor appeared to be developmentally delayed "in the area of problem solving." A Department social worker found minor to be "a very happy baby who has the ability to interact with others, say one word sentences, and dance when she hears music."

Minor remained in Foster Parents' home, where she had been since she was two days old. Foster Parents wanted to adopt minor. Foster Parents were "aware of [minor's] background and ha[d] no concerns regarding it. They are open to continuing

ongoing services for the child as long as it is needed.” The Department’s report reflected minor had been in Foster Parents’ home “for at least a year and [she] has developed a mutual bond with both caregivers. [Foster Parents] are dedicated to [minor] and are committed to raising her into adulthood.”

Father visited with minor twice, but then stopped attending visits. Father was arrested in April and remained incarcerated in August. Father’s attorney requested a contested termination hearing, which the juvenile court scheduled. Father remained an alleged Father and did not take a paternity test. By November, Father was no longer incarcerated.

On January 29, 2019, the juvenile court held a termination hearing in the case. Father did not personally appear at the hearing. Father’s attorney objected to the termination of parental rights but offered no affirmative evidence. Father did not provide a reason for his objection. The juvenile court found minor was likely to be adopted. The court terminated the parental rights of Mother, Father, and all unknown father. In the court’s termination order, Father is listed as an alleged father.

DISCUSSION

A. STANDING

The Department contends Father lacks standing to appeal because he is an alleged father.

“As a general rule, a parent may appeal from the termination of parental rights. [Citations.] However, only parties of record may appeal. [Citation.] A party of record is a person named as a party to the proceedings or one who takes appropriate steps to

become a party of record in the proceedings. [Citation.] A person does not become a party of record merely because his or her name and interest appear in documents filed with the court or are referenced in the judgment.

“ ‘An alleged biological father in dependency proceedings is a man who may be the father of a child, but whose biological paternity has not been established. [Citation.] ‘An alleged father in dependency or permanency proceedings does not have a known current interest because his paternity has not yet been established.’ [Citation.] An alleged biological father is entitled to notice of the proceedings. [Citation.] Notice provides an opportunity for him to appear and assert a position. [Citation.] ‘Although the name of the alleged father generally appears on papers filed with the court, the alleged father has the option of appearing. Notice alone does not make him a party.’ ”
(*In re Joseph G.* (2000) 83 Cal.App.4th 712, 715.)

In the instant case, Father was named in the petition and allegations were made against him. Father was represented by counsel throughout the juvenile court case. At the jurisdiction hearing, the juvenile court made findings against Father. Specifically, the juvenile court found (1) Father was unable to protect minor due to his criminal history and history of drug abuse, and (2) Father failed to protect minor because he knew or reasonably should have known of Mother’s drug abuse while pregnant. (§ 300, subd. (b).) Father requested a contested termination hearing, and the court agreed to his request.

Father was not merely provided with notice in the case. Although Father was labeled as an alleged father, he was treated as a party throughout the juvenile court

proceedings, especially when he was named in the petition and the court made findings against him. (See *In re Joseph G.*, *supra*, 83 Cal.App.4th at p. 715 [“named as a party”].) Therefore, while we agree with the Department that Father was an alleged father, we deem him to have standing due to Father being treated as a party of record in the juvenile court.

B. ADOPTABILITY

Father contends that substantial evidence does not support the finding that minor is generally or specifically adoptable.

We apply the substantial evidence standard of review. (*In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1154.) Under that standard, “we view the evidence in the light most favorable to the [juvenile] court’s [finding], drawing every reasonable inference and resolving all conflicts in support of the judgment. [Citation.] An appellate court does not reweigh the evidence. [Citation.] Rather, we must determine whether there is substantial evidence from which a reasonable trier of fact could by clear and convincing evidence find a factual basis for the finding as to the child’s adoptability.” (*In re Marina S.* (2005) 132 Cal.App.4th 158, 165.)

“ ‘The issue of adoptability posed in a section 366.26 hearing focuses on the minor, e.g., whether the minor’s age, physical condition, and emotional state make it difficult to find a person willing to adopt the minor. [Citations.] Hence, it is not necessary that the minor already be in a potential adoptive home or that there be a proposed adoptive parent “waiting in the wings.” [Citations.]’ [Citation.] ‘Usually, the fact that a prospective adoptive parent has expressed interest in adopting the minor is

evidence that the minor's age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent or by some other family.' " (*In re Lukas B.*, *supra*, 79 Cal.App.4th 1145, 1154.)

At the time of the termination hearing, minor was approximately 18 months old. Minor's young age is evidence of her adoptability. (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1562 ["young age . . . indicat[es] adoptability"].) Minor's physical health is shown by the evidence that she dances when she hears music. Minor's ability to dance reflects her physical ability to coordinate movements. Further, minor was attempting to scoot, which demonstrates her ability to move on her own. Thus, there is evidence of minor having fair physical health.

The social worker described minor as "a very happy baby." The social worker's observation is evidence of minor being emotionally healthy. The social worker also described minor as having "the ability to interact with others," which shows minor's ability to form relationships. The social worker observed that minor would "say one word sentences," which demonstrates minor's capacity for intellectual growth. Thus, the record reflects minor was young, with good emotional health, the ability to form relationships, the potential for intellectual growth, and fair physical health.

Moreover, Foster Parents were aware of minor's background and her need for services. Foster Parents had "no concerns" about minor's background and were "open to continuing ongoing services for the child as long as it is needed." Foster Parents'

desire to adopt minor is further evidence of minor's adoptability. We conclude the foregoing evidence supports the juvenile court's finding that minor is adoptable. The juvenile court did not err.

Father contends substantial evidence does not support the juvenile court's finding because minor was diagnosed with failure to thrive, she cried hysterically for hours, and she dragged her right leg when trying to scoot. Father is pointing to evidence that contradicts the juvenile court's finding of adoptability. This court does "not consider whether there is evidence from which the juvenile court could have drawn a different conclusion but whether there is substantial evidence to support the conclusion that the court did draw." (*In re M.R.* (2017) 8 Cal.App.5th 101, 108.) Because this court cannot reweigh the evidence, we find Father's argument to be unpersuasive.

Father goes on to assert that there is not substantial evidence of specific adoptability. "The question of adoptability posed at a section 366.26 hearing usually focuses on whether the child's age, physical condition, and emotional state make it difficult to find a person willing to adopt that child. [Citation.] If the child is considered generally adoptable, we do not examine the suitability of the prospective adoptive home. [Citation.] However, where the child is deemed adoptable based solely on the fact that a particular family is willing to adopt him or her, the [juvenile] court must determine whether there is a legal impediment to adoption." (*In re Carl R.* (2005) 128 Cal.App.4th 1051, 1061.)

We have concluded *ante*, that a finding of general adoptability is supported by substantial evidence. The juvenile court, in announcing its findings, said, "[T]here is

clear and convincing evidence that it's likely [minor] will be adopted.” Father did not argue in the juvenile court that minor was not generally adoptable. Therefore, because (1) there is evidence supporting a finding of general adoptability; and (2) it does not appear that the juvenile court reached the issue of specific adoptability, we do not discuss the issue of specific adoptability.

DISPOSITION

The judgment is affirmed.

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MILLER

Acting P. J.

We concur:

CODRINGTON

J.

SLOUGH

J.